

Judge Ronald B. Leighton

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,
Plaintiff

v.

CHANITA D. MCINTOSH,
Defendant.

NO. 15-5405 RBL

PLEA AGREEMENT

The United States of America, by and through Annette L. Hayes, United States Attorney for the Western District of Washington, Michael Dion and Amy Jaquette, Assistant United States Attorneys for said District, CHANITA D. MCINTOSH, and Defendant's attorney, Zenon Olbertz, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c):

1. **Charge.** Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters a plea of guilty to the following charge contained in the Indictment.

a. Possession with Intent to Distribute Methamphetamine, as charged in Count 1, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(B).

1 By entering this plea of guilty, Defendant hereby waives all objections to the form
2 of the charging document. Defendant further understands that before entering
3 Defendant's guilty plea, Defendant will be placed under oath. Any statement given by
4 Defendant under oath may be used by the United States in a prosecution for perjury or
5 false statement.

6 2. **Elements.** The elements of Possession with Intent to Distribute
7 Methamphetamine, as charged in Count 1, in violation of Title 21, United States Code,
8 Sections 841(a)(1) and 841(b)(1)(B), are as follows:

9 First, Defendant knowingly possessed methamphetamine; and

10 Second, Defendant possessed the methamphetamine with the intent to
11 distribute it to another person.

12 3. **The Penalties.** Defendant understands that the statutory penalties
13 applicable to the offense to which Defendant is pleading guilty are as follows:

14 a. For the offense of Possession with Intent to Distribute, as charged in
15 Count 1: A maximum term of imprisonment of up to forty (40) years and a mandatory
16 minimum term of imprisonment of five (5) years, a fine of up to \$5,000,000.00, a period
17 of supervision following release from prison of at least four years, and a mandatory
18 special assessment of \$100.00 dollars. Defendant agrees that the special assessment shall
19 be paid at or before the time of sentencing.

20 Defendant understands that supervised release is a period of time following
21 imprisonment during which Defendant will be subject to certain restrictive conditions and
22 requirements. Defendant further understands that if supervised release is imposed and
23 Defendant violates one or more of the conditions or requirements, Defendant could be
24 returned to prison for all or part of the term of supervised release that was originally
25 imposed. This could result in Defendant's serving a total term of imprisonment greater
26 than the statutory maximum stated above.

1 Defendant understands that as a part of any sentence, in addition to any term of
2 imprisonment and/or fine that is imposed, the Court may order Defendant to pay
3 restitution to any victim of the offense, as required by law.

4 4. **Forfeiture Of Contraband.** Defendant also agrees that if any law
5 enforcement agency seized any firearms or other illegal contraband that was in
6 Defendant's direct or indirect control, Defendant consents to the administrative forfeiture,
7 official use, and/or destruction of said firearms or contraband by any law enforcement
8 agency involved in the seizure of these items.

9 5. **Drug Offense - Proof of Drug Quantity for Mandatory Minimum.**
10 Defendant further understands that in order to invoke the statutory sentence for the drug
11 offense charged in Count 1, the United States must prove beyond a reasonable doubt that
12 the offense charged in this count involved more than fifty (50) grams or more of a
13 mixture or substance containing methamphetamine. Defendant expressly waives the
14 right to require the United States to make this proof at trial and stipulates as a part of this
15 plea of guilty that the offense charged in Count 1 involved more than fifty (50) grams or
16 more of a mixture or substance containing methamphetamine.

17 6. **Drug Offenses - Program Eligibility.** Defendant understands that by
18 pleading guilty to a felony drug offense, Defendant will become ineligible for certain
19 food stamp and Social Security benefits as directed by Title 21, United States Code,
20 Section 862a.

21 7. **Rights Waived by Pleading Guilty.** Defendant understands that by
22 pleading guilty, Defendant knowingly and voluntarily waives the following rights:
23 a. The right to plead not guilty and to persist in a plea of not guilty;
24 b. The right to a speedy and public trial before a jury of Defendant's
25 peers;
26 c. The right to the effective assistance of counsel at trial, including, if
27 Defendant could not afford an attorney, the right to have the Court
28 appoint one for Defendant;

- d. The right to be presumed innocent until guilt has been established beyond a reasonable doubt at trial;
- e. The right to confront and cross-examine witnesses against Defendant at trial;
- f. The right to compel or subpoena witnesses to appear on Defendant's behalf at trial;
- g. The right to testify or to remain silent at trial, at which trial such silence could not be used against Defendant; and
- h. The right to appeal a finding of guilt or any pretrial rulings.

8. **Ultimate Sentence.** Defendant acknowledges that no one has promised or guaranteed what sentence the Court will impose.

9. **Statement of Facts.** The parties agree on the following facts. Defendant admits Defendant is guilty of the charged offense:

- a. On April 17, 2015, Defendant arranged to pick up approximately four pounds of methamphetamine from an associate in Oregon for transport to the Tacoma area. As planned, the associate parked a vehicle in a specified location, with the keys under the floor mat. When Defendant arrived and attempted to enter the vehicle, Oregon State Police arrested Defendant. Defendant had a loaded .25 caliber pistol in her waistband and approximately \$6,976.00 in her purse.
- b. After her release, Defendant traveled to Tacoma and eventually began staying at the Days Inn located at 6802 Tacoma Mall Boulevard, Tacoma, Washington.
- c. On July 21, 2015, officers executed a search warrant at Defendant's hotel room at the Days Inn. During the execution of this warrant, officers searched Defendant's purse. Inside the purse, Defendant had approximately 440.2 grams of methamphetamine, 74.1 grams of heroin, 5.5

1 grams of black tar heroin, 30.6 grams of Phencyclidine (PCP), and five (5)
2 12 gauge shotgun shells.

3 d. Elsewhere in the hotel room, Defendant had a digital scale and \$2042.00 in
4 U.S. Currency.

5 e. Defendant knowingly possessed the methamphetamine recovered on July
6 21, 2015 with the intent to distribute it to another person.

7 10. **United States Sentencing Guidelines.** Defendant understands and
8 acknowledges that the Court must consider the sentencing range calculated under the
9 United States Sentencing Guidelines and possible departures under the Sentencing
10 Guidelines together with the other factors set forth in Title 18, United States Code,
11 Section 3553(a), including: (1) the nature and circumstances of the offense; (2) the
12 history and characteristics of the defendant; (3) the need for the sentence to reflect the
13 seriousness of the offense, to promote respect for the law, and to provide just punishment
14 for the offense; (4) the need for the sentence to afford adequate deterrence to criminal
15 conduct; (5) the need for the sentence to protect the public from further crimes of the
16 defendant; (6) the need to provide the defendant with educational and vocational training,
17 medical care, or other correctional treatment in the most effective manner; (7) the kinds
18 of sentences available; (8) the need to provide restitution to victims; and (9) the need to
19 avoid unwarranted sentence disparity among defendants involved in similar conduct who
20 have similar records. Accordingly, Defendant understands and acknowledges that:

21 a. The Court will determine applicable Defendant's Sentencing
22 Guidelines range at the time of sentencing;

23 b. After consideration of the Sentencing Guidelines and the factors in
24 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the
25 maximum term authorized by law;

26 c. The Court is not bound by any recommendation regarding the
27 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines
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1 range offered by the parties or the United States Probation Department, or by any
2 stipulations or agreements between the parties in this Plea Agreement; and

3 d. Defendant may not withdraw Defendant's guilty plea solely because
4 of the sentence imposed by the Court.

5 11. **Acceptance of Responsibility.** At sentencing, *if* the district court
6 concludes Defendant qualifies for a downward adjustment acceptance for acceptance of
7 responsibility pursuant to USSG § 3E1.1(a) and the defendant's offense level is 16 or
8 greater, the United States will make the motion necessary to permit the district court to
9 decrease the total offense level by three (3) levels pursuant to USSG §§ 3E1.1(a) and (b),
10 because Defendant has assisted the United States by timely notifying the United States of
11 Defendant's intention to plead guilty, thereby permitting the United States to avoid
12 preparing for trial and permitting the Court to allocate its resources efficiently.

13 12. **Sentencing Factors.** The parties agree that the following Sentencing
14 Guidelines provisions apply to this case:

- 15 a. A base offense level of 32, pursuant to U.S.S.G. § 2D1.1, because the
16 offense involved between 1.5 kilograms and 5 kilograms of a mixture or
17 substance containing methamphetamine.

18 The parties agree they are free to present arguments regarding the applicability of
19 all other provisions of the United States Sentencing Guidelines. Defendant understands,
20 however, that at the time of sentencing, the Court is free to reject these stipulated
21 adjustments, and is further free to apply additional downward or upward adjustments in
22 determining Defendant's Sentencing Guidelines range.

23 13. **Sentencing Recommendation.** The government will recommend a
24 sentence no greater than 84 months (seven years). The defendant is not bound by the
25 government's recommendation and may recommend whatever she chooses. The Court is
26 not bound by any recommendation regarding the sentence to be imposed, and may
27 impose any sentence up to the maximum term authorized by law. Except as otherwise
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1 provided in this plea agreement, the government is free to present arguments regarding
2 any other aspect of sentencing.

3 **14. Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,
4 the United States Attorney's Office for the Western District of Washington agrees not to
5 prosecute Defendant for any additional offenses – other than crimes of violence
6 (including but not limited to kidnapping, unlawful imprisonment, assault, and homicide)
7 – known to it as of the time of this Agreement that are based upon evidence in its
8 possession at this time, and that arise out of the conduct giving rise to this investigation.

9 In this regard, Defendant recognizes the United States has agreed not to prosecute
10 all of the criminal charges the evidence establishes were committed by Defendant solely
11 because of the promises made by Defendant in this Agreement. Defendant agrees,
12 however, that for purposes of preparing the Presentence Report, the United States
13 Attorney's Office will provide the United States Probation Office with evidence of all
14 conduct committed by Defendant.

15 Defendant agrees that any charges to be dismissed before or at the time of
16 sentencing were substantially justified in light of the evidence available to the United
17 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant
18 with a basis for any future claims under the "Hyde Amendment," Pub.L. No. 105-119
19 (1997).

20 **15. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that if
21 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea
22 Agreement and Defendant may be prosecuted for all offenses for which the United States
23 has evidence. Defendant agrees not to oppose any steps taken by the United States to
24 nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea
25 Agreement. Defendant also agrees that if Defendant is in breach of this Plea Agreement,
26 Defendant has waived any objection to the re-institution of any charges in the Indictment
27 that were previously dismissed or any additional charges that had not been prosecuted.
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1 Defendant further understands that if, after the date of this Agreement, Defendant
2 should engage in illegal conduct, or conduct that violates any conditions of release or the
3 conditions of his confinement, (examples of which include, but are not limited to,
4 obstruction of justice, failure to appear for a court proceeding, criminal conduct while
5 pending sentencing, and false statements to law enforcement agents, the Pretrial Services
6 Officer, Probation Officer, or Court), the United States is free under this Agreement to
7 file additional charges against Defendant or to seek a sentence that takes such conduct
8 into consideration by requesting the Court to apply additional adjustments or
9 enhancements in its Sentencing Guidelines calculations in order to increase the applicable
10 advisory Guidelines range, and/or by seeking an upward departure or variance from the
11 calculated advisory Guidelines range. Under these circumstances, the United States is
12 free to seek such adjustments, enhancements, departures, and/or variances even if
13 otherwise precluded by the terms of the plea agreement.

14 **16. Waiver of Appellate Rights and Rights to Collateral Attacks.**

15 Defendant acknowledges that by entering the guilty plea required by this plea agreement,
16 Defendant waives all rights to appeal from Defendant's conviction and any pretrial
17 rulings of the court. Defendant further agrees that, provided the court imposes a custodial
18 sentence that is within or below the Sentencing Guidelines range (or the statutory
19 mandatory minimum, if greater than the Guidelines range) as determined by the court at
20 the time of sentencing, Defendant waives to the full extent of the law:

21 a. Any right conferred by Title 18, United States Code, Section 3742,
22 to challenge, on direct appeal, the sentence imposed by the court, including any fine,
23 restitution order, probation or supervised release conditions, or forfeiture order (if
24 applicable); and

25 b. Any right to bring a collateral attack against the conviction and
26 sentence, including any restitution order imposed, except as it may relate to the
27 effectiveness of legal representation.
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1 This waiver does not preclude Defendant from bringing an appropriate motion
2 pursuant to 28 U.S.C. § 2241, to address the conditions of Defendant's confinement or
3 the decisions of the Bureau of Prisons regarding the execution of Defendant's sentence.

4 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
5 attacking (except as to effectiveness of legal representation) the conviction or sentence in
6 any way, the United States may prosecute Defendant for any counts, including those with
7 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea
8 Agreement.

9 17. **Voluntariness of Plea.** Defendant agrees that Defendant has entered into
10 this Plea Agreement freely and voluntarily and that no threats or promises, other than the
11 promises contained in this Plea Agreement, were made to induce Defendant to enter
12 Defendant's plea of guilty.

13 18. **Statute of Limitations.** In the event this Agreement is not accepted by the
14 Court for any reason, or Defendant has breached any of the terms of this Plea Agreement,
15 the statute of limitations shall be deemed to have been tolled from the date of the Plea
16 Agreement to: (1) thirty (30) days following the date of non-acceptance of the Plea
17 Agreement by the Court; or (2) thirty (30) days following the date on which a breach of
18 the Plea Agreement by Defendant is discovered by the United States Attorney's Office.

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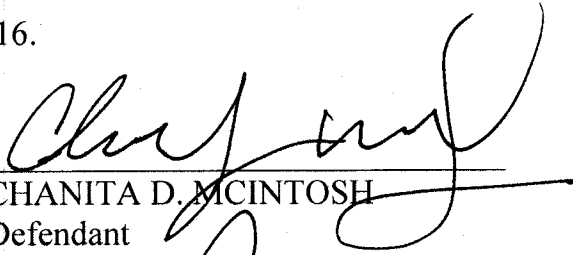
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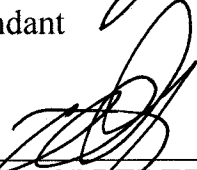
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1 19. **Completeness of Agreement.** The United States and Defendant
2 acknowledge that these terms constitute the entire Plea Agreement between the parties.
3 This Agreement binds only the United States Attorney's Office for the Western District
4 of Washington. It does not bind any other United States Attorney's Office or any other
5 office or agency of the United States, or any state or local prosecutor.

6 Dated this 2nd day of May, 2016.

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9 CHANITA D. MCINTOSH
10 Defendant

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12 ZENON OLBERTZ
13 Attorney for Defendant

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15 AMY JAQUETTE
16 Assistant United States Attorney

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18 MICHAEL DION
19 Assistant United States Attorney
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